IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

BREANN M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY and DUNCAN S., Appellees.	2 CA-JV 2006-0028 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 102127

Honorable Elizabeth Peasley-Fimbres, Judge Pro Tempore

AFFIRMED

Salvatore Nuccio — Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings — Tucson
Attorneys for Appellee Arizona
Department of Economic Security

P E L A N D E R, Chief Judge.

¶1 A jury found clear and convincing evidence justifying the termination of appellant Breann M.'s parental rights to her son, Duncan S., on grounds of mental illness, A.R.S. § 8-533(B)(3), and both nine-month and fifteen-month out-of-home placement, § 8-533(B)(8)(a) and (b). Breann appeals from the juvenile court's severance order entered

pursuant to that verdict. In the single issue raised on appeal, she contends the juvenile court abused its discretion in denying her motion in limine to exclude evidence of previous dependency proceedings concerning her older children. We affirm.

¶2 Duncan, born December 17, 2004, is Breann's fourth child. Duncan was taken into protective custody shortly after birth. Between 1985 and 2005, all four of Breann's children were removed from her custody. By the time of the severance trial in this case, her parental rights to the three older children had been terminated.

¶3 Breann suffers from serious and long-standing mental illness. She reported her first psychiatric hospitalization occurred when she was fifteen or sixteen years old, approximately twenty-five years before this trial. The psychiatrist who examined her in May 2005 at the request of Child Protective Services (CPS) testified that Breann suffers from a major depressive disorder and paranoid personality disorder with some borderline personality disorder traits. It is very difficult, he testified, for parents with such personality disorders to raise children.

¶4 Before trial, Breann filed a motion in limine seeking to preclude, among other things, any references at trial to "previous severance or dependency actions," which she claimed would be highly prejudicial. The Arizona Department of Economic Security opposed the motion, arguing that Breann's inability to parent her other children was directly relevant to the issue whether "there are reasonable grounds to believe that [her mental illness] will continue for a prolonged indeterminate period." § 8-533(B)(3). Further, the Department argued, both the psychologist and the psychiatrist who had evaluated Breann at the Department's request had relied on that background information in formulating their

professional opinions, which the Department argued would be "vitiate[d]" by precluding mention of those prior dependency and severance proceedings.

¶5 After hearing argument on the motion, the juvenile court ruled as follows:

> IT IS ORDERED the motion is granted as it relates to any severance or findings of termination. The State can bring in evidence of prior dependencies and the reasons why the children are not residing with the mother at the present time due to her mental health history and her ability to parent the children.

At trial, Breann notes, her CPS history was mentioned by the Department's attorney in both opening statement and closing argument, by the investigative CPS caseworker, and by psychologist Jill Plevell. Dr. Herron, the evaluating psychiatrist, also testified that "her history played a significant . . . part in [his] diagnosis of [paranoid personality disorder]" because previous experience "certainly is suggestive of future behavior." He noted that "other psychiatrists" had noted symptoms of Breann's personality disorder "as early as 1986" and that their findings were consistent with his own findings in 2005.

¶6 A juvenile court has broad discretion in admitting or excluding evidence, and we will not disturb its ruling absent a clear abuse of its discretion and resulting prejudice. *Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 19, 107 P.3d 923, 928-29 (App. 2005). The only authority Breann cites in support of her argument that all evidence of her "historic dependencies . . . should have been precluded" at trial is Rule 403, Ariz. R. Evid., 17A A.R.S. Rule 403 permits a trial court to exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." The weighing and balancing of those factors "is peculiarly a function of trial courts, not appellate courts." *Yauch v. S. Pac. Transp. Co.*,

198 Ariz. 394, ¶ 26, 10 P.3d 1181, 1190 (App. 2000). "[A]fter the trial [judge] has presumably weighed the factors and decided in favor of admissibility," we will affirm the ruling "absent an abuse of discretion." *Readenour v. Marion Power Shovel*, 149 Ariz. 442, 449-50, 719 P.2d 1058, 1065-66 (1986).

¶7 Although the record on appeal contains no transcript of the hearing at which the parties argued and the juvenile court ruled on Breann's motion, it appears from the court's minute entry that it did weigh and balance the factors identified in Rule 403 in reaching its decision to grant the motion in part and deny it in part. In the absence of a transcript showing specifically what the court considered and how it arrived at its decision, we will presume the record supports its ruling. *See Bliss v. Treece*, 134 Ariz. 516, 519, 658 P.2d 169, 172 (1983); *Bolm v. Custodian of Records*, 193 Ariz. 35, ¶ 19, 969 P.2d 200, 206-07 (App. 1998).

¶8 Among the central issues for decision here were whether Breann's mental illness rendered her unable to parent Duncan, whether her condition was likely to persist, *see* § 8-533(B)(3), and whether she was likely to be able to remedy the circumstances that had led to Duncan's removal and to become "capable of exercising proper and effective parental care and control in the near future," § 8-533(B)(8)(b). As Dr. Herron testified, the length of Breann's psychiatric history and her demonstrated inability over a period of years to parent her other children bore directly on the likely future course of her "very severe" illness. And Dr. Plevell testified as well that the persistence of Breann's problems and the consistency in her level of functioning over time were "unnerving" in light of the

reunification services Breann had received in the intervening years and the neglible effects those services seemed to have had on her ability to parent her children.

¶9 In short, the evidence that other children of Breann had been removed from her care because of her mental illness was directly relevant to the issues in this case. We cannot say the juvenile court abused its discretion in permitting the Department to introduce evidence of prior dependency proceedings and the reasons Breann's other children had been removed from her custody.

¶10 Affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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GARYE L. VÁSQUEZ, Judge